

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 441 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAJAPRASAD BHOLAPRASAD TIWARI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 441 of 2002
MR AD SHAH for Petitioner No. 1-2
Mr.H.L.Jani, learned A.P.P. for Respondent No. 1
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CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 02/05/2003

C.A.V. JUDGEMENT

1. Heard Mr.A.D.Shah, learned advocate for the
petitioners and Mr.H.L.Jani, learned A.P.P. for the State.

2. The present petitioners-accused, along with four other accused are prosecuted for the offences punishable u/s 395 of I.P.C. by Ankleshwar Police Station in C.R.No. I-115 of 2001. The police on completion of investigation submitted chargesheet against 6 accused persons. The original accused no. 3 to 5 were arrested on 8.11.01 and original accused no. 6 was arrested on 11.11.01 and they are not named as accused in the complaint filed by original complainant Jani Manishkumar Harshadrai who was serving with M/s Amar Dyeing and Printing Mills.

3. It is the case of the complainant that he is dealing in manufacturing and sale of finished products and that since last one year he has taken this Amar Dyeing & Printing Mills on contract basis and he is looking after the administration of the said company. It is the case of the complainant that he obtains unfinished cloth material and after process prepares the material. It is the case of the complainant that there were about 2000 takas of cloth of which some were processed and some were yet to be processed.

4. It is the case of the complainant that he has employed security persons to look after the company premises. Mr. Arunbhai Agrawal is the original-owner and Mr. Kiranbhai K Agrawal is the master of complainant and he took this factory from Arunbhai Agrawal. They receive cloth for processing directly from party as well as through brokers. One Kalpesh Shah is the broker through whom cloth material is received for processing. Arunbhai Agrawal has introduced Rajaprasad Bholaprasad Tiwari-accused no. 1 to his master and said Rajaprasad was working as labour contractor. The payment of processing charges is made on the basis of metre rates and approximately Rs. 1 to 1.5 lacs are outstanding to be paid to Raja Tiwari. One Arjunsingh was brought by Raja Tiwari and he was working as labour in-charge at the factory and the salary was paid by Raja Tiwari and similarly one Sagar was also employed by him. On account of non-payment of electricity bills since last two months, electricity was disconnected on 31.10.01 and from that date the factory was completely closed. Due to this closure, broker Kalpesh Shah and labour contractor Raja Tiwari informed the complainant that they should return the cloth so that they can also hand over the said cloth to the parties. It is the case of the complainant that he had informed them to bring parties and he will deliver the goods after taking process charges.

5. On 5.11.01, at about 11.00 a.m. labourers had come to the factory and were searching Raja Tiwari for payment. Munshi-accused no.2, younger brother of Raja had come with two tempos and wanted to talk on mobile but complainant did not talk with him. Munshi wanted the cloth and there was exchange of words.

6. On the same day, at about 7.30 p.m., 15-20 persons with two tempos came to the factory. It is the case of the complainant that Arun Agrawal, Kalpesh Shah, Arjunsingh, Sagar, Devilal and Chevli were in that group. They were having weapons like sword, dharia, iron pipes and revolvers. They entered the premises and beaten watchman and employees and thereafter removed 2000 takas from the factory premises which cost was to the tune of Rs. 27 lakhs. The complainant was informed regarding the said incident on mobile. He went to the factory, gathered the information from watchman and employees and thereafter submitted written complaint before the police. The police recorded the complaint being C.R.No. I-115/01 and further recorded statement of complainant and other witnesses. The police recorded the statements of witnesses who had given grey-cloth for dyeing process through broker Kalpeshbhai Shah. The police had recovered the material. Ultimately, chargesheet against six accused was submitted, however, no report appears to have been submitted in respect to accused Arun Agrawal, Kalpesh Shah, Arjunsingh, Sagar and others names in the complaint. The goods were received for the purpose of processing through Kalpesh Shah and whose presence has been reflected from the statement of Vikramsinh Laxmansinh. The investigation papers also revealed that though grey-cloth was received by the company for processing the same was not returned to the parties. Similarly, on investigation the amount of Rs. 27 lakhs is reduced to Rs. 7,15,000/-. The company was closed on 31.10.01 and the parties who had handed over grey-cloth for processing in month of July had been insisting for return of the goods.

7. The learned J.M.F.C. committed the case to the Court of Sessions and the same came to the registered as Sessions Case No. 122/02. The present petitioners submitted application for discharge u/s 227 of the Code of Criminal Procedure in the Court of learned Sessions Judge. The Addl. Sessions Judge, Fast Track Court No. 1, Bharuch rejected the said application on the ground that prima facie there was a case of involvement of 8 to 10 persons and removal of the grey cloth and other raw materials by those persons. Being dissatisfied with the said order, this revision application is filed.

8. At the time of arguments, learned advocate for the petitioners read out before me the original chargesheet and statements of Manishbhai Harshadrai Jani dated 11.11.01, Sarvantsingh Ajabsingh Majbi dated 6.11.01, Shahbuddin Mahmmad Ansari dated 6.2.02, Baldevsing Jebasing Majabshaikh dated 6.11.01, Sarvantsing Ajabsing dated 6.11.01 and tried to impress upon me that this cannot be said to decoity and mere theft under Sec. 384 of the Indian Penal Code.

9. In support of his submissions, learned advocate Mr.A.D.Shah for the petitioners relied on the following decisions :

1. Atum Lengmei and another V/s Manipur Administration reported in AIR 1962 Manipur 7.
2. E.J.Judah and others V/s King Emperor reported in AIR 1926 Calcutta 464.
3. Himanshu Bimal Mitra V/s The State reported in AIR (38) 1951 Assam 143(1).
4. Naththu Tulsi V/s Anok Singh and others reported in 1956 Cri.L.J. 1021.
5. In re Chitravelu Thevar and others reported in (28) AIR 1941 Madras 763.
6. Harichandran V/s The State reported in 1997 Cri.L.J. 41.
7. Kotha Das and another V/s State of A.P. reported in 1994 S.C.C. (Cri) 1169.
8. State of Madhya Pradesh V/s Mohanlal Lal Soni reported in AIR 2000 S.C.2583.

10. Lastly, it was submitted that the order passed by the learned Addl.Sessions Judge, Bharuch in Sessions Case No. 122/02 in application for discharge under Sec. 227 of Cr.P.C. is not passed on the principles, as stated by various authorities and therefore this court must interfere with this order by allowing this revision application.

11. Against the aforesaid submissions, learned A.P.P.Mr.Jani has submitted that all the authorities stated by the learned advocate for the petitioner are based after the trial is over and based on the facts of the case and what will happen to this matter after it goes to trial cannot be said at this stage. Therefore, the authorities relied on by the learned advocate for the petitioner will not help the petitioner.

12. In further submissions, learned A.P.P. for the State has argued that the petitioners-accused are

strong-headed persons and though 2000 takas were not belonging to them, by hook or crook they have taken those goods, finished goods as well as chemical drums making loss of Rs.7,50,000/-. It has also come on record that while doing so, the petitioners had beaten the witnesses also. Learned A.P.P. has relied on the letter written by Addl.P.S.I., Palsana to Police Station In-charge, Palsana police station dated 7.11.01 on page 56 of the paper book and submitted that as there is ample evidence to show that the goods in question were that of complainant's factory wherein five persons were detained as they were not in position to produce the bills for the goods in question. In these 5 persons, the names of the present petitioners are also there. Learned A.P.P. for the State has emphatically stated by relying on the statements on which the learned advocate for the petitioners are relied that the present two petitioners were labour contractors who engaged certain labourers and whose liability is to make the payment to such labourers. Moreover, on 5.11.01 when the incident took place, it has come on record that both petitioners came with two tempos along with other persons whose names have been disclosed by the witnesses, who took away the cloth goods by injuring certain persons and they caused decoity. In the circumstances, runs the submission of Mr.Jani learned A.P.P. for the State, there is a reason that the judgment and order of the trial court does not require interference by this court and accordingly this revision application be dismissed.

13. I have perused the authorities cited by the learned advocate for the petitioners and also perused the statements produced on record. I have come across certain panchanamas on record by which the grey-cloth is identified which was given through Kalpesh Shah for process. None of the panchanamas disclosed the names of either the petitioners through whom the cloth was given for process and therefore it is difficult to come to the conclusion that the present petitioners were having any interest in the clothes coming for process. In view of the statement of the witness by name Shahbuddin Mohammad Ansari on page no. 31, there is a reference of earlier statement dated 11.11.01 recorded. Now that statement is not produced on record by the defence counsel. The said statement clearly involves the present petitioners in the crime.

14. Sec. 391, I.P.C. defines that where the number of persons who commit or attempt to commit a robbery and the persons present and aiding such commission or attempt, amount to 5 or more, every person committing or

attempting or aiding will be said to commit decoity. It is necessary that the appellants must be shown to have conjointly committed the robbery or aided such commission.

15. If we peruse the statements produced on record and going through the panchanama, there is hardly any chance to say that the present petitioners were not with the other accused at the time of decoity for which they have been charged.

16. I have gone through the order of the learned trial court. I am also of the opinion that the learned Judge has passed the order at length and this Court does not feel it proper to interfere with the said order. In view of the aforesaid circumstances, the revision application is rejected. Rule is discharged. Interim relief vacated.

(SHARAD D DAVE, J)

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